

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY  
LITIGATION

MDL No. 2:18-mn-2873-RMG

**This Document Relates to  
ALL CASES**

**REPORT AND RECOMMENDATIONS CONCERNING FEE ALLOCATION**

This filing addresses the allocation of \$124,310,000.00 of fees available from three sources:

1. CMO No. 3 (Dkt. No. 72) provides: “[T]he Court shall impose a holdback assessment of 6% allotted for common benefit attorneys’ fees ... from any settlement(s) or judgment(s) paid by defendants.” The Tyco Marinette, WI (*Campbell*) and *City of Stuart* matters were subject to CMO No. 3’s holdback assessment. They settled for a total of \$112.5 million, resulting in a 6% holdback assessment of **\$6,750,000.00**.
2. The plaintiffs’ attorneys entered into settlements against BASF and Tyco. On November 22, 2024, the Court awarded a total of **\$85,320,000.00** of fees for the two settlements (Dkt. No. 6408).
3. On April 23, 2024, the Court entered an Order and Opinion awarding fees for the DuPont and 3M settlements (Dkt. No. 4885). The Court awarded the full amount requested by the plaintiffs’ attorneys. In accordance with the plaintiffs’ attorneys’ suggestion, the Court provided that 5% of the award be held back for future settlement administration. This “5% holdback” will eventually total \$46,740,000.00. However, the payment of the settlement is structured, and not all of the funds are currently available. DuPont has already paid its full settlement obligation, resulting in a 5% holdback fund of **\$4,740,000.00**. 3M has paid part of its settlement obligation, resulting in a currently available 5% holdback fund of **\$18,425,000.000**. 3M will make another payment in April 2025, making another **\$9,075,000.00** available for the 5% holdback fund.

The undersigned, along with my partners Daniel J. Balhoff and John W. Perry, III, approached the allocation of fees in the same manner that we employed for the DuPont and 3M

settlements. We contacted the more than 40 interested firms in an attempt to reach a fair and amicable agreement based upon a well-reasoned methodology.

In arriving at an appropriate fee allocation, we considered the number of hours expended, the professional level of the timekeeper, the nature of the task, and the amount of monetary investment (whether as shared costs or held costs). We were guided by “the governing principles” of CMO No. 3, which (at paragraph 17) cites the controlling jurisprudence. Among the cases cited is *In re Vioxx*, an MDL shepherded by Judge Eldon Fallon. As Judge Fallon stated:

In a case of this kind, not all types of work are created equal. Hours spent taking depositions, participating in hearings, or trials, actively participating in developing the appropriate litigation strategies and tactics (through moot court presentations or similar practices), drafting briefs, actively participating in Court conferences, arguing motions, negotiating with opposing counsel to reach a settlement, and actively managing and organizing the administrative aspects of the case are some of the more significant types of work that a case of this sort requires and deserves the most recognition. This, of course, is not the only type of work that such a case requires. Documents must be reviewed, categorized, and analyzed; e-mails must be read and responded to; claimants must be kept advised; meetings must be attended and in general the litigation must be monitored. This work, while necessary and often time consuming does not deserve equal treatment when allotting fees.

*In re Vioxx Prods. Liab. Litig.*, 802 F.Supp.2d 740, 772 (E.D. La. 2011), quoting *Turner v. Murphy Oil USA, Inc.*, 582 F.Supp.2d 797, 810-11 (E.D. 2008). Judge Fallon summed up: “In short, there is a hierarchy of value for work that tends to have a greater impact on the litigation and generates more ‘common benefit.’ Such work deserves greater compensation.” *Id.*

Utilizing the above methodology, we were able to secure commitments from each firm to accept a specific award. Independent of the fact that the respective firms have agreed to these

amounts, it is my belief (based upon my own work and that done by my team) that these amounts are reasonable and in accordance with the relevant law.<sup>1</sup>

If this Court should adopt the instant Report and Recommendations, the awards will be final and the fees will be ordered paid to each firm. Some of the law firms have expressed an interest in receiving some or all of their total fee award in periodic payments, rather than in a lump sum. This is solely for convenience and does not provide the plaintiffs' attorneys with any ownership interest in any portion of the settlement other than the right to receive the fee payments in the future as specified in relevant assignment documents to be completed prior to receipt of fees by plaintiffs' attorneys. Therefore, it is recommended that Matthew Garretson, the Court-appointed Qualified Settlement Fund Administrator, be permitted to enter into such agreements and to take all steps necessary to facilitate payment of periodic payments, and further, that the Fund Administrator shall be held harmless and indemnified by the attorneys with whom the Fund Administrator enters into such agreements.

It is my recommendation that the Court adopt Exhibit 1 as the allocation for the funds available as described above. If the Court wishes me to supplement this report or to respond to any inquiries, I am prepared to comply.

Dated: February 19<sup>th</sup>, 2025

/s/

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<sup>1</sup> In addition to the funds which are available for the payment of fees, there are funds available for the payment of costs (shared and held) totaling \$13,846,081.51. The disbursement of those funds will be the subject of a separate filing.

Exhibit 1 -- Fee Allocation							
Firm	Tyco Marinette/City of Stuart Fees	BASF/Tyco Fees	DuPont 5% Holdback Fees	3M 5% Holdback Fees (Pre-April 2025)	Total Fees Available For Immediate Distribution	3M 5% Holdback Fees (April 2025)	Total Fees
Baron & Budd PC	\$ 1,417,500.00	\$ 17,027,880.00	\$ 1,137,600.00	\$ 4,422,000.00	\$ 24,004,980.00	\$ 2,178,000.00	\$ 26,182,980.00
Beggs & Lane RLLP	\$ 4,141.13	\$ 47,109.44	\$ -	\$ -	\$ 51,250.57	\$ -	\$ 51,250.57
Bell Legal Group	\$ 569.70	\$ 31,400.00	\$ -	\$ -	\$ 31,969.70	\$ -	\$ 31,969.70
Burns Figa & Will PC	\$ -	\$ 5,600.00	\$ -	\$ -	\$ 5,600.00	\$ -	\$ 5,600.00
Cohn Liffand Pearlman Hermann & Knopf LLP	\$ 2,209.28	\$ 25,132.71	\$ -	\$ -	\$ 27,341.99	\$ -	\$ 27,341.99
Cossich Sumich Parsiola & Taylor LLC	\$ 810,000.00	\$ 9,816,160.00	\$ 758,400.00	\$ 2,948,000.00	\$ 14,332,560.00	\$ 1,452,000.00	\$ 15,784,560.00
Crueger Dickinson	\$ 8,301.15	\$ 94,433.88	\$ -	\$ -	\$ 102,735.03	\$ -	\$ 102,735.03
Dema Law Office	\$ 3,656.48	\$ 41,596.06	\$ -	\$ -	\$ 45,252.54	\$ -	\$ 45,252.54
Douglas & London PC	\$ 1,417,500.00	\$ 17,027,880.00	\$ 1,137,600.00	\$ 4,422,000.00	\$ 24,004,980.00	\$ 2,178,000.00	\$ 26,182,980.00
Edelson PC	\$ 1,583.55	\$ 18,014.46	\$ -	\$ -	\$ 19,598.01	\$ -	\$ 19,598.01
Environmental Litigation Group PC	\$ 18,909.45	\$ 458,000.00	\$ -	\$ -	\$ 476,909.45	\$ -	\$ 476,909.45
Fears Nachawati Law Firm	\$ 35,186.40	\$ 400,280.49	\$ -	\$ -	\$ 435,466.89	\$ -	\$ 435,466.89
Fegan Scott LLC	\$ 13,866.53	\$ 562,400.00	\$ 94,800.00	\$ 368,500.00	\$ 1,039,566.53	\$ 181,500.00	\$ 1,221,066.53
Frazer PLC	\$ 22,962.15	\$ 311,217.42	\$ -	\$ -	\$ 334,179.57	\$ -	\$ 334,179.57
Grant & Eisenhofer PA	\$ 14,733.90	\$ 311,800.00	\$ -	\$ -	\$ 326,533.90	\$ -	\$ 326,533.90
Hagens Berman Sobol & Shapiro LLP	\$ 9,353.48	\$ 106,405.13	\$ -	\$ -	\$ 115,758.61	\$ -	\$ 115,758.61
Hausfeld LLP	\$ 19,387.35	\$ 220,550.49	\$ -	\$ -	\$ 239,937.84	\$ -	\$ 239,937.84
Kanner & Whiteley LLC	\$ 4,725.68	\$ 902,850.00	\$ -	\$ -	\$ 907,575.68	\$ -	\$ 907,575.68
Kelley Drye & Warren LLP	\$ 154,289.48	\$ 1,755,197.07	\$ -	\$ -	\$ 1,909,486.55	\$ -	\$ 1,909,486.55
Knauf Shaw LLP	\$ -	\$ 32,600.00	\$ -	\$ -	\$ 32,600.00	\$ -	\$ 32,600.00
Levin Papanonio Thomas Mitchell Rafferty Proctor PA	\$ 742,500.00	\$ 8,634,680.00	\$ 237,000.00	\$ 921,250.00	\$ 10,535,430.00	\$ 453,750.00	\$ 10,989,180.00
Levin Sedran & Berman	\$ 256,466.93	\$ 3,067,967.74	\$ 189,600.00	\$ 737,000.00	\$ 4,251,034.67	\$ 363,000.00	\$ 4,614,034.67
Madonna & Madonna, LLP	\$ 10,848.61	\$ 339,185.33	\$ -	\$ -	\$ 350,033.94	\$ -	\$ 350,033.94
Marten Law LLP	\$ -	\$ 64,100.00	\$ -	\$ -	\$ 64,100.00	\$ -	\$ 64,100.00
McDivitt Law Firm PC	\$ 23,151.15	\$ 302,700.00	\$ -	\$ -	\$ 325,851.15	\$ -	\$ 325,851.15
Morgan & Morgan Complex Litigation Group	\$ 89,986.95	\$ 1,023,691.54	\$ -	\$ -	\$ 1,113,678.49	\$ -	\$ 1,113,678.49
Motley Rice LLC	\$ 241,231.50	\$ 3,157,849.54	\$ 521,400.00	\$ 2,026,750.00	\$ 5,947,231.04	\$ 998,250.00	\$ 6,945,481.04
Napoli Shkolnik PLLC	\$ 1,026,000.00	\$ 12,198,176.00	\$ 663,600.00	\$ 2,579,500.00	\$ 16,467,276.00	\$ 1,270,500.00	\$ 17,737,776.00
Plevin Gallucci Company LPA	\$ 4,500.23	\$ 51,194.56	\$ -	\$ -	\$ 55,694.79	\$ -	\$ 55,694.79
Pritzker Levine LLP	\$ 12,561.75	\$ 780,800.00	\$ -	\$ -	\$ 793,361.75	\$ -	\$ 793,361.75
Rigano LLC	\$ 4,821.53	\$ 69,750.00	\$ -	\$ -	\$ 74,571.53	\$ -	\$ 74,571.53
Rogers Patrick Westbrook & Brickman LLC	\$ 17,855.10	\$ 285,800.00	\$ -	\$ -	\$ 303,655.10	\$ -	\$ 303,655.10
Saltz Mongeluzzi & Bendesky PC	\$ 70,227.68	\$ 823,910.03	\$ -	\$ -	\$ 894,137.71	\$ -	\$ 894,137.71
Seeger Weiss	\$ 3,169.13	\$ 36,051.97	\$ -	\$ -	\$ 39,221.10	\$ -	\$ 39,221.10
Sher Edling LLP	\$ 79,899.08	\$ 1,205,050.00	\$ -	\$ -	\$ 1,284,949.08	\$ -	\$ 1,284,949.08
Singleton Schreiber LLP	\$ 144.35	\$ 1,643.26	\$ -	\$ -	\$ 1,787.61	\$ -	\$ 1,787.61
SL Environmental Law Group PC	\$ 17,767.35	\$ 202,121.37	\$ -	\$ -	\$ 219,888.72	\$ -	\$ 219,888.72
Solomon Law Group LLC	\$ 6,733.80	\$ 101,603.71	\$ -	\$ -	\$ 108,337.51	\$ -	\$ 108,337.51
Stag Liuzza	\$ 7,730.78	\$ 807,844.16	\$ -	\$ -	\$ 815,574.94	\$ -	\$ 815,574.94
Taft Stettinus & Hollister LLP	\$ 59,315.63	\$ 1,453,600.00	\$ -	\$ -	\$ 1,512,915.63	\$ -	\$ 1,512,915.63
The Ferraro Law Firm	\$ 51,662.48	\$ 756,450.00	\$ -	\$ -	\$ 808,112.48	\$ -	\$ 808,112.48
The Hannon Law Firm LLC	\$ 7,764.53	\$ 88,329.24	\$ -	\$ -	\$ 96,093.77	\$ -	\$ 96,093.77
The Kuykendall Group LLC	\$ 9,571.50	\$ 133,885.38	\$ -	\$ -	\$ 143,456.88	\$ -	\$ 143,456.88
Weitz & Luxenberg PC	\$ 47,214.23	\$ 537,109.02	\$ -	\$ -	\$ 584,323.25	\$ -	\$ 584,323.25
<b>TOTAL</b>	<b>\$ 6,750,000.00</b>	<b>\$ 85,320,000.00</b>	<b>\$ 4,740,000.00</b>	<b>\$ 18,425,000.00</b>	<b>\$ 115,235,000.00</b>	<b>\$ 9,075,000.00</b>	<b>\$ 124,310,000.00</b>